

SPECIAL CIVIL APPLICATION No 4935 of 1989

Hon'ble MR.JUSTICE D.P.BUCH

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any O

5. Whether it is to be circulated to the Civil Judge? : NO

Versus

Appearance:

Mr Darshan Parikh with MR BHARAT J SHELAT for Respondent No. 1

Date of decision: 10/04/2000

This is a petition filed under Articles 226, 14 and 16 of the Constitution of India against the banking company challenging the guidelines issued by the respondent-banking company with respect to request

transfer of the employees and officers of the respondent bank. Petitioners are employees of the respondent bank and the respondent bank has issued certain guidelines on 13.12.1979 for regulating the request transfer of employees of the respondent-Bank of Baroda (for short, 'the Bank'). It appears that the respondent bank has several branches in the country and, therefore, the employees may be required to be transferred from one branch to another, from one station to another and some times it so happens that the respondent itself may transfer employees from one station to another. Sometimes it may also happen that the employees may make requests for his/her transfer from one station to another. Therefore, with a view to regulate the applications of the employees for their transfer from one place to another, the respondent bank issued guidelines to determine as to how the applications for request transfer should be considered and entertained by the respondent bank. Some guidelines appear to have been issued in the past and by fresh guidelines on 13.12.1979, new guidelines have been issued and the said general guidelines show that they are in supersession of the existing guidelines. Therefore, these are the latest guidelines issued by the respondent bank for considering request transfer of the employees and officers of the respondent bank. The aforesaid guidelines are reproduced for ready reference as follows since they have been placed at page 40 to the petition:

"GENERAL GUIDELINES

- (i) It is the Management's discretion to consider requests for transfers and it may reject any request without assigning reasons.
- (ii) Any transfer would be against a clear vacancy and provided the Regional Authority under whose jurisdiction the workman is working, is in a position to relieve him and provided the Regional Authority in whose region the workman requests transfer is in a position to absorb him, against a clear vacancy.
- (iii) No minimum service would be necessary for considering requests for transfer, provided he is confirmed in service.
- (iv) A workman requesting for transfer should agree in writing to forego existing special allowance, if any, and undertake not to claim any special allowance at the place of transfer for a period

of two years from the date of such transfer (a draft of the undertaking to be given is enclosed.)

- (v) Where there is more than one person requesting for transfer to a particular place, then the requests would be considered according to seniority on the basis of date of joining.
- (vi) Where there is more than one workman requesting for transfer to a particular place and there are SC/ST workmen also among them, then for the SC/ST workmen, 22 vacancies at the place would be reserved and the requests of such workmen would be considered within that quota according to seniority among them only.
- (vii) Requests for transfer would be considered only if the work and conduct of the applicant is satisfactory.
- (viii) Normally, a request for transfer would be considered once in the entire service of the workman.
- (ix) Requests for transfer of female employees on the ground of marriage or for joining their spouses and workmen seeking transfer on compassionate ground and/or compelling grounds, may be considered out of turn, but subject to vacancy and other conditions.
- (x) Applications for transfer will not normally be considered piecemeal or on an ongoing basis. Requests for transfer would be considered periodically as under:

- (a) From one zone to another zone - once in 6 months
- (b) From one Region to another
Region in the same zone - once in 3 months
- (c) Within the region - No stipulation.

The above guidelines would be uniformly applied to all cases of requests for transfer in future".

2. The say of the petitioners is that the respondent bank, a nationalized bank, is a State within the meaning of Article 12 of the Constitution of India and, therefore, the respondent is required to work and act judiciously and in a rational manner. That from that angle certain guidelines are not reasonable and rational

and, therefore, the petitioners challenge guidelines No.1, 3 and 7. Therefore, the question required to be considered is as to whether these guidelines are not rationale or reasonable from any angle whatsoever. Guideline No.1 shows that it is the management's discretion to consider requests for transfer and it may reject any request without assigning reasons.

3.1. Learned Advocate for the petitioner has very strenuously argued that since the respondent is a State within the meaning of Article 12 of the Constitution of India, the petitioners have every right to know as to why applications for transfer have been rejected by the respondent bank. Therefore, the last line of the first guideline which says that request transfer can be rejected without assigning reasons, has been challenged by the petitioners by way of this petition. It is also their case that they are the employees and officers of the respondent bank and they are not slaves and, therefore, there is every right of information vested in the petitioners.

3. As against this, learned Advocate for the respondent has also submitted that the petitioners possess no right of transfer to a particular zone or a particular place. In support of the said argument, learned Advocate for the respondent has relied on a decision of this Court in the case of Jayantibhai v. G.M. (Personnel), Bank of Baroda dated 11.5.1999 in Special Civil Application No.3592/99. It appears from the copy of the said judgment that the petitioner in the aforesaid matter was employee of Bank of Baroda. He preferred aforesaid Special Civil Application for a direction to the respondent bank to post the petitioner by granting request transfer at Ahmedabad. This Court has observed in the said judgment that these are matters for consideration of the respondents and the petitioner has no legal or fundamental right for posting at a particular place. Therefore, it is not permissible for this Court to issue writ of mandamus. Even otherwise, transfer is understanding of service and, therefore, this is never considered as a right vested in an employee to get transfer at a particular station. Apart from the said position, the point to be noted is that the request transfers are being permitted in the employment of the respondent bank and the applications are being considered on the strength of the guidelines issued as aforesaid. The only point is as to whether the petitioners have right to know the reasons as to why their applications are rejected.

4. Sometimes it so happens that the respondent bank has to consider various aspects while transferring and posting a particular individual employee or officer at a particular place. For doing so, the respondent bank may be required to consider nature and character of work in a particular branch, the nature of the employee or officer concerned, the atmosphere prevailing there, work-load of that branch, capacity of the employee or officer to be posted at a particular branch and many other factors are required to be considered for placing a particular person at a particular branch. It may so happen that even at a given situation, there may be two or more branches and one of them may be very heavily-loaded branch, another one may have medium work and third branch may have very light work. Therefore, while giving posting to such branches, even in one given station, the management will have to consider suitability of a particular employee or officer for that particular work. Even aptitude of that particular person to work in a particular manner may also be required to be considered. Therefore, the management will be required to consider various aspects before placement of a particular individual in a particular branch. For example, an employee or officer seeking request transfer at a particular station may be very competent and the branch in which the vacancy arises may be very light and the management may think of utilizing his service in a heavy branch. Therefore, the management may keep back the application of request transfer of that particular individual for some time and as and when vacancy may arise in a heavier branch in some station, his application may be properly considered for placing him in that branch where work-load is heavy. In all such cases, it may not be reasonable or practicable to issue reasoned order and convey to the person concerned as to why the application is not allowed. On the one hand there is no right vested in an employee or officer to be posted at a particular station and if his/her application is considered and disallowed, there would be no need to convey the reasons for the same. Thus, in my view, there is no right vested in the petitioner employees or officers to know the reasons as to why the request transfers are not allowed. Under the circumstances, it cannot be said that simply because there is a provision that request transfer can be disallowed without assigning reasons, the guidelines issued are not reasonable or rationale. Some times, it may so happen that reasons are required to be assigned and if the reasons are assigned, they may also be a subject matter of challenge and there would be another floodgate for litigation on such issues. Any way, the management will have to consider suitability of employees/officers for being posted at a branch or the

station concerned and for so doing, it may not be necessary for the management to assign reasons for posting or not posting at a particular employee or officer at a particular branch in a particular station. In the aforesaid view of the matter, it cannot be said that the aforesaid guidelines are not rationale and reasonable and therefore, they cannot be quashed.

5. The second point under challenge is guideline No.3. It shows that no minimum service would be necessary for considering the requests for transfer, provided he is confirmed in service.

6. Here the grievance is that there is a provision in the guidelines that the person applying for request transfer must be a confirmed employee in service. It has been argued on behalf of the respondent that the petitioner has only two categories in service - first is probationary service and the second is confirmed service. This would mean that only cases of persons on probation are not required to be considered for the request transfer. There is no grievance with respect to that angle of these guidelines. So far as the confirmed employees are concerned, there are further guidelines at sr.no.5 referred to above that where there is more than one person requesting for transfer to a particular place then the request would be considered according to the seniority on the basis of date of joining. This guideline No.5 is not in dispute and is not in challenge. If we read guidelines No.3 and 5 together, it would mean that confirmed employees and officers only would be considered for transfer on request and if two or more persons apply for the same station, then seniority on the basis of the date of joining will prevail. In other words, the senior persons will be considered first and junior to follow thereafter. I do not find this rule can be treated to be irrational or unreasonable. Again the argument has been advanced on this point that even for so doing when request transfer is disallowed, the reasons may not be assigned as per first guideline, the petitioners will not be in a position to know the reason for not granting request transfer.

7. This would amount to challenge to first guideline and not guideline No.3. So far as guideline No.3 is concerned, it is very clear that only employees or officers who are confirmed can be considered for request transfer and that angle cannot not be put in challenge. During the course of argument, the only argument advanced is that if guidelines No.3 and 5 are read together, it is clear that senior persons may not be getting request

transfer but the junior may get it and according to the first guideline, the person concerned may not know the reasons for non-acceptance of their request transfer. In my views, again this is a challenge to first guideline and not the third guideline. Even otherwise, when the probationers are concerned, they have to show satisfactory work before they are confirmed. Therefore, there is nothing wrong if their request transfer is not considered by the management. It is not the grievance of the petitioners also and the petitioners do not say that even probationers should be allowed to go for request transfer, therefore also the guidelines cannot be said to be unreasonable or irrational guidelines. Therefore, even the guideline No.3 cannot be treated to be illegal or unconditional.

8. There is a reference to the guideline No.7 which says that the request for transfer would be considered only if the work and conduct of the employee is satisfactory. I think this would encourage the employees and officers to show better work and better conduct. Moreover, if the work is not satisfactory or if the conduct is not satisfactory, then the employee or officer cannot get benefit of request transfer. There is nothing wrong about the same also. Naturally, the persons who show satisfactory work and conduct may be preferred over those whose work and conduct are not satisfactory. So far as the satisfactory work and conduct are concerned, they will be reflected in the Annual Confidential Report and I am told that there is a practice in the respondent bank also to have Annual Confidential Report of employees and officers. Learned Advocate for the petitioners has argued that if a particular employee or officer is not in good books of his higher up, then there may be adverse entries in the Annual Confidential Report (for short, 'the ACR') and that would come in the way of the particular individual employee or officer in getting request transfer. If the conduct or work of the person concerned is not really satisfactory and if adverse entry is made in the ACR of the persons concerned, none can help him. If the report is with prejudice or with bias mind, then it has been submitted that there is a provision for representation/review before the Reviewing Officer. Therefore, the concerned officer or employee can submit appropriate representation before the Reviewing Authority and the concerned authority will deal with the issue properly, objectively and on the basis of materials which may be placed before him. It has also been argued that the Reviewing Authority will take time and in the mean time there may be several things which may happen adverse

to the case of the person concerned. Ordinarily, review or representation is required to be disposed of very promptly and if there is any urgency even the request can be made for immediate disposal of the representation or the review. Under the circumstance, simply because there may be some delay in disposal of representation or review application, it cannot be said that the guidelines are not reasonable. I do not find anything wrong in these guidelines since the only requirement is that the person concerned has to show satisfactory work and conduct. After all the employees and officers are required to work satisfactorily and they also require to show satisfactory conduct. This conduct would be towards the higher-ups, to their equals, subordinates and to persons coming as clients and customers of the bank. If the conduct is not satisfactory vis-a-vis either of the aforesaid set of people, then the management may not think it proper to grant request transfer of such persons and if that is done, it cannot be said to be illegal, irrational or unreasonable action on the part of the management and therefore, if the condition that the work and the conduct of the applicant is satisfactory is made a pre-condition for request transfer, in my views, these guidelines cannot be treated to be illegal, unconstitutional, irrational or unreasonable.

9. Learned Advocate for the respondent has also argued that after all this is a scheme and the guidelines for sanctioning request application for transfer of employees and officers from one station to another on account of the personal difficulties of the person concerned. At the same time, the guideline is also a scheme and all the scheme may not be foolproof all scheme cannot be overthrown in all aspects and the guidelines may not satisfy all persons from all angles but that does not mean that the guidelines may be struck down as being unreasonable or irrational.

10. Certain authorities have been cited on this line. First is in the case of State Government Pensioners' Association & Ors. v. State of Andhra Pradesh, AIR 1986 SC 1907. There, the Hon'ble Apex Court has observed in para 2 that merely striking down the alleged offending portion whereby it is made effective from the specified date will not do. And this, the Court cannot do. The reason is that the Court cannot substitute its own decision in place of the decision recorded as policy matter by the concerned State. Another decision referred to is State of UP v. U P University Colleges Pensioner's Association, AIR 1994 SC 2311. The relevant portion is para No.8 at page 2314. There it has been observed as

under:

"so far as his submission relating to the basis of computation of pension, we would observe that in principle we do not find any objection in computing the pension on the basis of last pay drawn at the age of 58 years. This is for the reason that demand of the Association being basically grounded on the better pensionary benefit available to Government teachers. This apart, as to how much of liberalisation should have been conceded is a matter of policy and if the Government decided to go as far as visualized by the G.O. of 28.4.1980, it is not open to any Court to interfere with the same, as the policy contained in the G.O. cannot be said to be either unreasonable or against public interest, which are the only two grounds available to a Court to interfere with a policy matter while reviewing the same judicially."

One more decision relied on by the learned Advocate for the petitioner is Union of India v. P N Menon & Ors, AIR 1994 SC 2221. In para 14 at page 2225 it has been observed as under:

"No scheme can be held to be foolproof, so as to cover and keep in view all persons who were at one time in active service. As such the concern of the Court should only be while examining any such grievance to see as to whether a particular date for extending a particular benefit or scheme, has been fixed, on objective and rational consideration."

Considering the aforesaid decision in light of the discussion hereinabove, it is very clear that the petitioners have not been able to show that the guidelines issued by the respondent bank are irrational or unreasonable. It has also not been shown that these guidelines appearing in the said scheme are against public interest. Under the circumstances, it cannot be said that the guidelines issued as aforesaid are illegal and unconstitutional and should be struck down by this Court.

11. So far as the contention that the respondent bank is a "State" within the meaning of Article 12 of the Constitution of India, no doubt the respondent is a "State" within the meaning of Article 12. Nevertheless, the functions and the activities carried on by it are

really not in the nature of sovereign nature. They are all commercial activities/functions. Therefore, the respondent has to stand to the competitions in the market wherein other banking institutions including nationalised banks, other banks, Cooperative banks and other non-banking institutions partly stepping into banking activities of loan advances and fixed deposits, that too without bypassing the general or special directions of the Reserve Bank of India.

11.1. Advances in different fields like agriculture, housing, business, industries would bring business and interest to the respondent. Deposits will bring money for such business. There has to be some balance between advance and deposits. On the other hand, there has to be balance between advance and recovery.

12.2. The respondent may also be required to deal with the problems of its employees/officers relating to discipline, service conditions, salary and other benefits. Therefore, several fields may be required to be covered by the respondent. Different employees and officers may be good, substandard or very good for different kinds of jobs. Different branches/stations may have different type of work, different type of problems etc. The respondent may, therefore, be required to consider several aspects before posting an individual employee to a particular branch. An employee may be good and suitable for regional/zonal office, may not be proved so for branch office and vice versa. An employee may be suitable for getting deposits but he may not be good and suitable in finding out proper persons for advances of loans. Employees suitable elsewhere may not be in a position to deal with Non-Resident Indians or with foreign exchange problems. Some of them may be good for dealing with the branches abroad. All these things are required to be taken into consideration while posting an employee at some vacant place.

11.3. In the premises, it can be said that the respondent may not be in a position to assign reasons for posting or not posting an employee at a particular place. Moreover, when there is no right of being posted at a particular place, refusal to give posting at the place of choice would not entitle the employee/officer to get reasons for such refusal. Moreover, ultimate discretion in the matter of transfer of employees/officers cannot be outright taken away from the management. From this angle also, the guidelines cannot be treated to be unreasonable and hence, cannot be quashed. This would clearly show that the petitioners have failed in proving that the

aforesaid guidelines for the request transfer of the employees and officers of the respondent Bank are unreasonable, irrational, illegal and against the provisions of articles of Constitution of India and therefore, they cannot be quashed.

12. In view of the aforesaid discussion, I am of the decision that there is no merit in the contentions raised on behalf of the petitioner for challenging the aforesaid guidelines and consequently, there is no merit in this petition and the same is accordingly dismissed. Rule discharged with cost of the respondent.

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msp.